

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**



June 15, 2011

Steven E. Sher
Director of Zoning and Land Use Services
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W. - Suite 100
Washington, DC 20006

Re: 601 Block of H Street, N.E.

Dear Mr. Sher:

This is to confirm the substance of our discussion on Tuesday, May 3, 2011, concerning the development of the above-referenced property located on the south side of H Street between 6th and 8th Streets, N.E. The property is known as Lot 177 in Square 859 and is zoned C-2-C and C-2-A in the H Street Northeast Neighborhood Overlay District.

The project was reviewed and approved by the Board of Zoning Adjustment in Application No. 17521, by Order dated August 21, 2007. Further, by Order dated April 8, 2009, the BZA extended the original approval, such that the approval will now expire August 21, 2011.

The original order contains a condition which is standard in most BZA Orders:

Pursuant to 11 DCMR § 3130, this order shall not be valid for more than two years after it becomes effective unless, within such two-year period, the applicant files plans for the proposed structure with the Department of Consumer and Regulatory Affairs for the purposes of securing a building permit.

This order reflects the provisions of § 3130.1 ("No order authorizing the erection or alteration of a structure shall be valid for period longer than two (2) years ... unless, within such period, the plans for the erection or alteration are filed for the purposes of securing a building permit)."

Since the Zoning Regulations do not define what constitutes a "building permit," I have had occasion to consider that issue with respect to other projects. Building permits are authorized by the Construction Code and specifically are as set forth in Section 105A of the D.C. Supplement (12 DCMR) to the International Building Code. Section 105.1.4 lists all of the various categories of Building Permits, including in paragraph 1, "New construction, including

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constructing, adding to or moving a building or structure." Since for many projects, permits are issued in phases, it is common for a project to first obtain an excavation, sheeting and shoring permit, then a foundation to grade permit, then the main permit for the above-ground construction and then further permits for tenant improvement work. Excavation and sheeting and shoring permits are listed as "Specialty Permits" under §105.1.11, which is a different section of the Code from Building Permits, and I have therefore determined that those permits are not building permits as that term is used in the Construction Code and the Zoning Regulations. Since a foundation to grade permit is a permit *which* authorizes new construction, I have previously concluded that such a permit is a building permit within the meaning of the Zoning Regulations.

Specifically with respect to the BZA Order and §3130.1, if you file an application for a foundation to grade permit with the necessary supporting plans and documentation and pay the required fee by August 21, 2011, you will have met the requirements of the Regulations to vest the Board's approval as set forth in the original order and the extension order. Note further that under §3130.2, you must take out the permit within six months after the date that the District advises that the permit is ready to be issued.

Please let me know if I may be of further assistance.

Sincerely, 
Matthew Le Grant
Zoning Administrator